UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BASHAS' INC.

and **Case 28-CA-168505**

CARLOS MEJIA, an Individual

INITIAL BRIEF OF BASHAS' INC. TO THE NATIONAL LABOR RELATIONS BOARD

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I. INTRODUCTION

Respondent Bashas' Inc. ("Bashas'") respectfully moves the Board for an order dismissing the Complaint in its entirety as none of the policies challenged by the Counsel for the General Counsel ("CGC") violate the National Labor Relations Act ("Act"). In the Complaint, the CGC alleges that Bashas' has maintained several overly broad and unlawful rules in its employee handbook related to work performance standards, confidential business information, solicitation and distribution, the use of cell phones during working time, and violations of privacy rights. However, Bashas' has made every reasonable and diligent effort to comply with the Board's guidance on these issues. Indeed, after the General Counsel issued Memorandum GC 15-04 Report of the General Counsel Concerning Employer Rules on March 18, 2015 ("G.C. Memo"), Bashas' revised its handbook to comply with that guidance. In addition, prior to distributing its employee handbook in 2015, Bashas' reviewed relevant Board decisions and revised its handbook accordingly. [Jt. Ex. 2.]

The decision of Region 28 of the NLRB to issue a Complaint and pursue claims of allegedly unlawful handbook policies in this case is nothing more than a waste of government resources as Bashas' specifically followed the General Counsel's guidance in the G.C. Memo prior to issuing the latest version of its employee handbook. Furthermore, Region 28 improperly initiated the handbook allegations even though it dismissed the allegations regarding the only Charging Party in this case, Carlos Mejia. The acts of Region 28 in pursuing the Complaint are improper as the Board's regional offices cannot initiate their own unfair labor practice proceedings by carte blanche expansion of the original charge. *See NLRB v. Fant Milling Co.*, 360 U.S. 301, 309 (1959) (noting that, while "the Board is not precluded from 'dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board," that does not mean that the

Board is "left 'carte blanche to expand the charge as they might please, or to ignore it altogether.'"). For these reasons, and as expanded further below, the Board should reject the CGC's claims and dismiss the Complaint in its entirety.

II. STATEMENT OF FACTS

On January 27, 2016, Charging Party Carlos Mejia filed a charge with Region 28 of the NLRB alleging that:

> Within the past six months, the above-named Employer has discriminated against its employees, including Carlos Mejia, by disciplining him in retaliation for and/or to discourage protected concerted activities.

[Jt. Ex. 1(a).] On or about April 4, 2016, Region 28 sent Bashas' an amended charge, which alleged that:

> Within the past six months, the above-named Employer has interfered with, restrained, and coerced employees in the exercise of their Section 7 rights under the National Labor Relations Act through its actions, including, but not limited to, discriminating against its employees, including Carlos Mejia, by disciplining them in retaliation for and/or to discourage protected concerted activities, and maintaining overly-broad and discriminatory rules in its employee handbook.[1]

[Jt. Ex. 1(c).] On or about April 27, 2016, Mr. Mejia withdrew all of the allegations asserted in his original charge, which was approved by Region 28. [Stip. of Facts ¶ 5(c).] Accordingly, the only allegations remaining in this matter are the allegations regarding Bashas' employee handbook – none of which have anything to do with Charging Party Carlos Mejia.

Despite receiving a position statement explaining that Bashas' current employee handbook was specifically drafted to comply with the G.C. Memo and existing Board law, Region 28 has refused to adhere to the Board's own case law and guidance. On May 31, 2016,

[1] Notably, Region 28 sought information regarding Bashas' employee handbook before the charge even was amended to include any allegations of overly-broad and discriminatory rules.

Bashas' received the Complaint in this matter challenging several lawful policies in its employee handbook. [Jt. Ex. 1(e).] On June 13, 2016, Bashas' filed its Answer denying that it had violated the Act in any way. [Jt. Ex. 1(g).]

III. ANALYSIS

A. The Charge Was Improperly Amended To Include Allegations Unrelated To Mr. Mejia's Claims.

While the Board has "authority to investigate matters 'related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board,'" that does **not** mean the Board has "carte blanche to expand the charge as [it] might please, or to ignore it altogether." *Allied Waste Servs. of Mass. LLC*, 2014 WL 7429200, at *1 (Dec. 21, 2014); *see also NLRB v. Indus. Union of Marine & Shipbuilding Workers of Am., AFL-CIO, Local 22*, 391 U.S. 418, 424 (1968) (stating that the "Board cannot initiate its own proceedings; implementation of the Act is dependent 'upon the initiative of individual persons'"). While NLRB regional employees can offer assistance to charging parties in identifying specific sections of the Act and basic theories of allegations, such assistance must be based on the circumstances initially described by a charging party. NLRB Unfair Labor Practice Casehandling Manual § 10012.2. Additionally, while a Region may generally seek an employee handbook during its investigation if some handbook provisions are potentially relevant to the specific allegations in the unfair labor practice charge, that does not allow a regional office to utilize a subpoenaed handbook "for the purpose of initiating or expanding charges or investigations." *Allied Waste Servs. of Mass. LLC*, 2014 WL 7429200, at *2. "More generally, such action would constitute an exercise of authority that Congress intentionally denied to the Board."

Here, Mr. Mejia's initial charge was amended to include alleged policy violations wholly unrelated to the facts giving rise to Mr. Mejia's charge and only **after** Region 28 of the NLRB

sought information regarding irrelevant policies. As the Board noted in *Allied Waste Services of Massachusetts*, "if the Region invoked our subpoena power to obtain employee handbooks or policy statements for the purpose of initiating or expanding charges or investigations, this would be an 'improper purpose' that would warrant revocation of the subpoena." 2014 WL 7429200, at *1. But, Region 28 did just that when it requested information regarding unrelated handbook policies and later asked Charging Party Carlos Mejia to sign an amended charge capturing the handbook allegations initiated by Region 28. Because all of the allegations regarding Mr. Mejia have been withdrawn, there are no proper allegations before the Board for consideration. For these reasons, the Board should dismiss the Complaint in its entirety.

B. To Be A Violation Of The Act, The Mere Maintenance Of A Policy Must Reasonably Tend To Chill Section 7 Rights And Not Be Justified By A Legitimate Business Reason.

A facially-neutral employment policy is lawful unless: (1) employees would reasonably construe it to prohibit Section 7 activity; (2) it was promulgated in response to union activity; or (3) it was actually applied to restrict Section 7 activity. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004). Even a policy that might reasonably tend to interfere with Section 7 rights does not automatically violate the Act. Rather, the policy can be justified by a legitimate and substantial business reason. *See Ang Newspapers*, 343 NLRB 564, 565 (2004) (finding employer demonstrated legitimate and substantial business reason for rule that might reasonably chill Section 7 rights) (quoting *Caesar's Palace, Inc.*, 336 NLRB 271, 272 n.6 (2001)).

Here, there is no allegation that Bashas' promulgated any of the challenged policies in response to union activity or applied them to restrict Section 7 rights. Thus, the CGC has the burden of establishing that employees would reasonably construe the challenged policies in Bashas' employee handbook to prohibit Section 7 activity. As demonstrated below, this is something the CGC cannot do.

C. The Challenged Policies Follow Existing Board Precedent And The March 2015 G.C. Memo Concerning Employer Rules.

1. Complaint Paragraph 4(a)(1)

The Complaint begins by challenging two provisions in the "Bashas' Pledges and Goals" as overly broad and discriminatory. The first challenged provision asks Bashas' employees to:

> **Show respect and consideration for our customers and our work environment.**

[Jt. Ex. 2 at 3, ¶ 4(a)(1).][2]

Nothing in this provision implicates Section 7 rights. First, employers are well within the law to ask employees to show respect and consideration for customers. As the G.C. Memo observes, "when an employer's handbook simply requires employees to be respectful to customers, competitors, and the like, but does not mention the company or its management, employees reasonably would not believe that such a rule prohibits Section 7-protected criticism of the company." G.C. Memo at 8. Illustrative rules found to be lawful include prohibiting "rudeness or unprofessional behavior toward a customer, or anyone in contact with" the company, and being "discourteous or disrespectful to a customer or any member of the public while in the course and scope of [company] business." G.C. Memo at 8-9.

Second, asking employees to show respect and consideration for the general "work environment" cannot reasonably be read to prohibit employees from engaging in protected criticism of the Company or its management. As noted above, simply asking "employees to be respectful and professional to coworkers, clients, or competitors, but not the employer or management, will generally be found lawful." G.C. Memo at 7. Similarly, prohibiting a "lack of respect and cooperation with fellow employees or guests," including "displaying a negative

[2] The Complaint misquotes the employee handbook as allegedly stating: "Show respect, and consideration for fellow members, customers, and your work environment." [Jt. Ex. 1(e) at 2.]

attitude that is disruptive to other staff or has a negative impact on guests" is lawful. *Id.* at 9. In comparison, policies that explicitly reference "the Company" and/or "management" have been found to unlawfully "ban protected criticism or protests regarding their supervisors, management, or the employer." *Id.* (finding unlawful rules that state "be respectful to the company," do "not make fun of, denigrate, or defame . . . the Company," "[b]e respectful of . . . the Company," and no "[d]efamatory, libelous, slanderous or discriminatory comments about [the Company] . . . or management"). Here, Bashas' policy is appropriately limited to customers and the general work environment – it makes no mention of the Company or its management. Absent any language that reasonably can be read as prohibiting employees from criticizing Bashas' or its supervisors and managers, the policy lawfully asks employees to respect customers and the general work environment – which includes "coworkers, customers, employer business partners, and other third parties." *Id.*

Nor does the second challenged provision in the "Bashas' Pledges and Goals" violate the Act as alleged. It simply asks employees to:

> **Work in a cooperative manner with management, co-workers, customers and vendors.**[3]

[Jt. Ex. 1(e) at 2.]

Absolutely nothing in that provision implicates Section 7 rights. To the contrary, Bashas' intentionally drafted that provision to track the language identified as lawful in the G.C. Memo. *See* G.C. Memo at 9 (noting language stating that "[e]ach employee is expected to work in a cooperative manner with management/supervision, coworkers, customers and vendors" was lawful). As the G.C. Memo noted, "rules requiring employees to cooperate with each other and the employer in the performance of their work also usually do not implicate Section 7 rights."

[3] Bashas' refers to its employees as "members" of the Bashas' family.

Id. In a similar case, the Board held that a rule prohibiting a "lack of respect and cooperation with fellow employees or guests," including "displaying a negative attitude that is disruptive to other staff or has a negative impact on guests" was lawful. *Id.* (citing *Copper River of Boiling Springs, LLC*, 360 NLRB No. 60, slip op. at 1, 28-29 (Feb. 28, 2014)). The G.C. Memo clarified its reasoning as follows:

> Thus, we found the following rule was lawful because employees would reasonably understand that it is stating the employer's legitimate expectation that employees work together in an atmosphere of civility, and that it is not prohibiting Section 7 activity.

G.C. Memo at 9. Here, Bashas' drafted its policy to specifically mirror the language identified as lawful in the G.C Memo. It is nonsensical for the CGC to now claim a violation exists.

2. Complaint Paragraph 4(a)(2)

The Complaint next challenges Bashas' "Confidential Proprietary Information" policy as allegedly overbroad and discriminatory. That policy reads as follows:

> **Bashas' treats its proprietary business information and its members' personnel records as confidential and will release it only to state, federal or legal agencies, or as otherwise required by law. All personnel records are considered property of Bashas'.**
>
> **Divulging Bashas' proprietary business information, or confidential information regarding the company's vendors or customers, to individuals or entities that are not authorized to receive that information is unacceptable and can result in disciplinary action, up to and including termination of employment. Members who divulge such information also risk personal liability. This rule is not intended to cover members' discussion of wages, hours, or conditions of employment. With the written permission of a member, the company will provide information concerning the member's job position, length of service and compensation to a third party who requests such information. Upon request from a third party (such as a prospective employer), the company may report a former member's dates of employment and last position held, without the member's permission.**

[Jt. Ex. 1(e) at 2-3, ¶ 4(a)(2).]

Nothing in this policy violates the Act or Board precedent. Bashas' "Confidential Proprietary Information" policy specifically distinguishes between "proprietary business information" and "personnel records" and explains that Bashas' places an obligation on **itself** to keep both "proprietary business information" and "personnel records" confidential in most circumstances. The policy goes on to explain the limited circumstances under which Bashas' will release certain personnel information to third parties.

The second paragraph of the policy separately describes the confidentiality requirements for Bashas' employees, noting that they cannot disclose "Bashas' proprietary business information" or "confidential information regarding the company's vendors and customers" to unauthorized individuals or entities. [Jt. Ex. 2 at 17.] As the G.C. Memo makes clear, an employer can lawfully restrict employees from disclosing confidential business and customer information. Indeed, the General Counsel indicated that the following language was lawful:

> Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.

G.C. Memo at 6.

In comparison, the second paragraph of Bashas' "Confidential Proprietary Information" policy has no similar provisions barring employees from disclosing information contained in personnel records. As the G.C. Memo and Board precedent repeatedly stress, provisions must be read in context to determine if a reasonable employee would interpret them as restricting Section 7 rights. *See* G.C. Memo at 4-6, 9, 11-12, 16-17, 19. "[I]n determining whether a challenged rule is unlawful, the Board must . . . give the rule a reasonable reading. It must refrain from reading particular phrases in isolation, and it must not presume improper interference with employee rights." *Lutheran Heritage Village-Livonia*, 343 NLRB at 646. As the first paragraph makes clear, "Bashas' proprietary business information" and "members' personnel records" are

two **different** categories of documents. While Bashas' is required to keep both types of documents confidential in most cases, its employees are only required to keep Bashas' proprietary business information confidential – not personnel records.

No Bashas' employee could reasonably read the challenged language as limiting their Section 7 rights to discuss their wages, benefits or other terms and conditions of employment. However, to ensure there could be absolutely no confusion, the language challenged by the CGC expressly states that "[t]his rule is not intended to cover members' discussions of wages, hours, or conditions of employment." [Jt. Ex. 2 at 17.] In light of that express disclaimer, no reasonable employee could read the policy as interfering with Section 7 rights when it expressly states that it does **not** apply to any such protected activities. Indeed, that language intentionally tracks the language the Board required in a settlement agreement with Wendy's restaurants revising that company's employee handbook provisions to make clear they did not apply to Section 7 rights. *See* G.C. Memo at 29. Accordingly, nothing in Bashas' "Confidential Proprietary Information" policy can be viewed as interfering with employee rights under the Act.

3. Complaint Paragraphs 4(a)(3) and 4(a)(4)

The Complaint next challenges language contained in Bashas' "Personal Belongings" and "Cell Phones and Electronic Devices" policies as overbroad and discriminatory. The challenged language from those policies reads as follows:

> **Personal Belongings**
>
> . . .
>
> **Cell phones, iPods, and any other electronic devices must be turned off and kept in member's locker or car during work hours.**
>
> . . .
>
> **Cell Phones and Electronic Devices Usage**

While the use of personal cell phones, iPods, music video players and digital cameras is commonplace, they have no place during working time due to the potential for issues such as invasion of privacy (members and customers), sexual or other harassment, and protection of Bashas' proprietary information. Consequently, members must not use a cell phone, digital camera (including cell phone cameras), iPod or other personal electronic device during working time; and, during working time, such devices should be kept in a member's issued locker or his/her car.

Only with the permission of the store director or a manager on duty is a member allowed to use a personal cell phone during working time.

. . .

[Jt. Ex. 1(e) at 3, ¶ 4(a)(3)-(4).]

Based on pre-Complaint conversations with Region 28, it appears that the CGC may be challenging the above language in light of the Board's decision in *Whole Foods Market Group, Inc.*, 363 NLRB No. 87 (2015). However, that decision dealt with rules that "unqualifiedly prohibit **all** workplace recording." *Id.*, slip op. at 4 (emphasis added). As the Board noted, those rules did not distinguish between working and nonworking time and, further, "require employees to obtain the employer's permission before engaging in recording activity on nonwork time." *Id.*, slip op. at 4 n.10 ("The Board has stated that any rule that requires employees to secure permission from their employer as a precondition to engaging in protected concerted activity on an employee's free time and in nonwork areas is unlawful").

In comparison, the *Whole Foods* decision distinguished the Board's prior decision in *Flagstaff Medical Center*, 357 NLRB No. 65 (2011), which found the ban on the use of cameras for recording purposes to be lawful. As the *Whole Foods* decision highlighted, the ban was lawful, in part, because it was limited to "work time." *Id.*, slip op. at 4, n.12 (quoting policy language). Here, the challenged Bashas' policies are similarly limited to the use of personal cell phones and other electronic devices during "working time" and "work hours." [Jt. Ex. 2 at 23 and 26.] Nor does the first provision mention recording or photography at all. Also, when read

in context with surrounding language, the policies at issue specifically explain that their purpose is to avoid issues such as sexual and other harassment, invasion of privacy, and the disclosure of Bashas' proprietary information. [Jt. Ex. 2 at 23 and 26.] Accordingly, there is no way that an employee could reasonably read those policies to unlawfully chill Section 7 rights in violation of the Act.

4. Complaint Paragraph 4(a)(5)

The Complaint next alleges that Bashas' "Solicitation and Distribution Rules" is overly broad and discriminatory. The challenged language from that policy reads as follows:

> **Providing the most ideal work environment possible is very important to Bashas'. We hope our members feel very comfortable and at ease when they are at work. Therefore, to protect our members and our customers from unnecessary interruptions and annoyances, it is Bashas' policy to prohibit the distribution of documents and other items for non-company related activities or information in work areas and to prohibit solicitation and distribution of documents and other items for non-company related activities or information during working time. "Working Time" is the time a member is engaged, or should be engaged, in performing his/her work tasks for the company, excluding rest breaks, meal periods and before or after work. These guidelines also apply to solicitation by electronic means. Nothing in this section prohibits members from discussing their terms and conditions of employment. Non-employees are prohibited at all times from solicitation or distribution of any kind on company premises.**

[Jt. Ex. 1(e) at 3-4, ¶ 4(a)(5).]

Nothing in the above language violates the Act in any way. Bashas' "Solicitation and Distribution Rules" follow basic, long-standing Board precedent allowing employers to prohibit solicitation during working time, and distribution during working time and/or in working areas. *See, e.g., Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 620-21 (1962) (seminal case holding that employers can prohibit solicitation during working time and distribution during working time or in working areas). Bashas' also drafted its "Solicitation and Distribution Rules" to mirror the

policy revisions agreed to in the Wendy's restaurant Board settlement and cited to in the G.C. Memo as an example of a lawful policy. The approved Wendy's policy reads as follows:

> Providing the most ideal work environment possible is very important to Wendy's. We hope you feel very comfortable and at ease when you're here at work. Therefore, to protect you and our customers from unnecessary interruptions and annoyances, it is our policy to prohibit the distribution of literature in work areas and to prohibit solicitation and distribution of literature during employees' working time. "Working Time" is the time an employee is engaged or should be engaged in performing his/her work tasks for Wendy's. These guidelines also apply to solicitation by electronic means. Solicitation or distribution of any kind by non-employees on Company premises is prohibited at all times. Nothing in this section prohibits employees from discussing terms and conditions of employment.

G.C. Memo at 29.

Furthermore, Bashas' "Solicitation and Distribution Rules" expressly state that "[n]othing in this section prohibits employees from discussing terms and conditions of employment," making it impossible for an employee to read the policy as chilling Section 7 rights. [Jt. Ex. 2 at 27.] Region 28 apparently ignored that policy language and excluded it from the Complaint – despite the Board's own requirement to read policies in context and not in isolation. *See Lutheran Heritage Village-Livonia*, 343 NLRB at 646; G.C. Memo at 4-6, 9, 11-12, 16-17, 19. For these reasons, Bashas' "Solicitation and Distribution Rules" do not violate the Act.

5. Complaint Paragraph 4(a)(6)

The Complaint next alleges that Bashas' policy entitled "Performance Standards" is somehow overly broad and discriminatory. The challenged language reads as follows:

> . . .
>
> **Bashas' asks that all of its members work in a cooperative manner with management and their coworkers, thus helping to create and maintain a great shopping experience for our customers.**[4]

[4] The Complaint conveniently fails to include the last clause of this sentence, taking away required context.

. . .

[Jt. Ex. 1(e) at 4, ¶ 4(a)(6).]

First, that challenged language is simply an excerpt from a much broader policy that must be read in context. Immediately preceding the challenged excerpt, the policy provides: "Bashas' expects all members to display, each and every day, **a professional attitude** towards our customers, their coworkers, and our vendors/suppliers." [Jt. Ex. 2 at 28 (emphasis in original).] Notably, the Complaint does not include that contextual language. [Jt. Ex. 1(e) at 4.] Bashas' policy goes on to state that "members also are responsible for meeting their job performance expectations. Should any member find it difficult to perform his/her required job duties, he/she will be given the opportunity to gain necessary skills." [Jt. Ex. 2 at 28.] The policy then proceeds to discuss potential options when job duty performance issues exist and provides examples for employees to further understand the intent of the policy. [Jt. Ex. 2 at 28.] That additional context – as opposed to the self-serving excerpt challenged by the CGC – makes it clear that Bashas' policy on "Performance Standards" does not violate the Act as alleged.

However, even if read in isolation (which is inappropriate given the Board's own guidance on reviewing the lawfulness of employer policies and rules), the challenged excerpt does not violate the Act as alleged. As explained above, the G.C. Memo and Board law clearly state that "rules requiring employees to cooperate with each other and the employer in the performance of their work also usually do not implicate Section 7 rights." G.C. Memo at 9 (citing *Copper River of Boiling Springs, LLC*, 360 NLRB No. 60, slip op. at 1 (holding a rule prohibiting a "lack of respect and cooperation with fellow employees or guests," including "displaying a negative attitude that is disruptive to other staff or has a negative impact on guests" was lawful)). Because Bashas' policy tracks language previously identified by the General Counsel and the Board as lawful, it cannot violate the Act as alleged. *See* G.C. Memo at 9.

6. Complaint Paragraph 4(a)(7)

The final language in Bashas' employee handbook challenged by the CGC is the third bullet point in Bashas' "Social Networking Communications Policy." The challenged excerpt reads as follows:

> **Material or information that <u>may not</u> be posted includes, but is not limited to, information which:**
>
> . . .
>
> - **Violates the privacy rights of another member, such as social security information.**
>
> . . .
>
> **Discipline**
>
> **Members found to be in violation of this Social Networking Communications policy, directly or indirectly, may be subject to disciplinary action, up to and including termination of employment.**

[Jt. Ex. 1(e) at 4, ¶ 4(a)(7).]

Again, like the other allegations in the Complaint, this allegation attacks language in isolation – not in context as the Board requires. First, the challenged excerpt addresses "privacy rights" of other employees. However, it does not stop there. Instead, it provides a specific example that identifies the true intent of the policy – the protection of employee social security information. [Jt. Ex. 2 at 30.] Clearly, Bashas' has a legitimate business interest (and a legal obligation) to protect its employees from having their identities compromised by restricting employee use of coworker social security information (assuming they were able to obtain access to such information in conjunction with their job duties). Nothing in the challenged excerpt makes any mention of information protected under Section 7 of the Act, such as the right of employees to discuss their wages, benefits and other terms and conditions of employment.

Second, while the Complaint conveniently ignores the remaining provisions of the Social Networking Communications Policy, the entire policy read as a whole provides further context

demonstrating its true intent. For example, the challenged excerpt is preceded with the following examples of inappropriate conduct on social media: "racial slurs or other inappropriate comments based on an individual's protected classification" as well as "negative comments about Bashas' customers." [Jt. Ex. 2 at 30.] The challenged excerpt is then succeeded by additional examples of inappropriate conduct on social media, including: intentional or inadvertent disclosure of Bashas' business, financial and marketing strategies; violations of copyright and other intellectual property laws; maliciously false statements regarding Bashas', its products, its employees, or its customers, vendors and suppliers; content that claims to be an authorized statement on behalf of Bashas', as well as unlawful harassment, discrimination and retaliation. [Jt. Ex. 2 at 30.] As noted above, Board precedent and the G.C. Memo repeatedly stress the need for language to be read in context to determine if a reasonable employee would understand it to restrict Section 7 rights. In the context of multiple examples related to legal rights and obligations – with the only challenged example being employee privacy rights in their protected social security information – no reasonable employee could view Bashas' Social Networking Communications Policy as restricting Section 7 rights.

IV. CONCLUSION

For the above reasons, Bashas' respectfully requests that the Board dismiss the Complaint in its entirety.

Dated this 30th day of September 2016.

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